

25.102 Policy.

(a) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

- (1) For use outside the United States;
- (2) For which the cost would be unreasonable, as determined in accordance with 25.105;
- (3) For which the agency head determines that domestic preference would be inconsistent with the public interest;
- (4) That are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities, of a satisfactory quality (see 25.108); or
- (5) Purchased specifically for commissary resale.

(b) Unless agency regulation prescribes otherwise:

(1) The contracting officer may make a nonavailability determination under 25.102(a)(4) for an acquisition if—

- (i) The acquisition was conducted by full and open competition;
- (ii) The acquisition was synopsized under 5.201; and,
- (iii) No offer for a domestic end product was received; or

(2) The head of the contracting activity or designee may make a nonavailability determination under 25.102(a)(4) for any circumstance other than that specified in paragraph (b)(1) of this section.

[48 FR 42278, Sept. 19, 1983, as amended at 54 FR 48985, Nov. 28, 1989; 56 FR 41736, Aug. 22, 1991]

25.103 Agreements with certain foreign governments.

The Department of Defense and the National Aeronautics and Space Administration (NASA) have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to their acquisitions for public use of certain supplies mined, produced, or manufactured in certain foreign countries. Detailed procedures implementing these determinations are in the Department of Defense (DOD) Federal Acquisition Regulation

Supplement and the NASA Federal Acquisition Regulation Supplement.

[48 FR 42278, Sept. 19, 1983, as amended at 53 FR 662, Jan. 11, 1988]

25.104 Acquiring civil aircraft and related articles.

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to the acquisition of civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and Instrumentalities that are parties to the agreement (as of January 1, 1996) are Canada, the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom), Japan, Norway, Romania, and Switzerland. The Office of the U.S. Trade Representative, Washington, DC 20506, can provide information on changes to the list of parties to the agreement made since January 1, 1996.

(b) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(c) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

[48 FR 42278, Sept. 19, 1983, as amended at 53 FR 662, Jan. 11, 1988; 60 FR 67515, Dec. 29, 1995]

25.105 Evaluating offers.

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic